

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1518

**Introduced by Committee on Aging and Long-Term Care (Assembly
Members Brown (Chair), Gipson, Levine, and Lopez)**

March 10, 2015

An act to amend ~~and renumber~~ Section 14132.99 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1518, as amended, Committee on Aging and Long-Term Care.
Medi-Cal: nursing facilities.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law authorizes the state to obtain waivers for home- and community-based services. Existing law authorizes the department to seek an increase in the scope of these waivers, in order to enable additional nursing facility residents to transition into the community, subject to implementation of these amended waivers upon obtaining federal financial participation, and to the extent it can demonstrate fiscal neutrality within the overall department budget.

This bill would authorize the department to seek additional increases in the scope of the home- and community-based Nursing Facility/Acute Hospital Waiver. The bill would require the department to, by February 1, 2016, apply for an additional 5,000 slots, to be added in the 2016–17 fiscal year, beyond those currently authorized for the waiver. ~~The bill would, for each fiscal year after the 2016–17 fiscal year, require that the department consider specified factors, consult with stakeholders, calculate the need for additional slots, and seek federal approval to add those slots to the waiver. Prior to submitting the annual request for additional waiver slots and the waiver renewal request, the bill would require the department to notify the appropriate fiscal and policy committees of the Legislature of the number of waiver slots included in the waiver renewal request along with data supporting that number of slots.~~

~~The bill would require the department to make an eligibility and level of care determination, and inform the individual about available waiver services, within three business days of receipt of the individual's application for those patients who are in acute care hospitals and who are pending placement in a nursing facility and for those individuals who are more likely than not to be placed in a hospital or nursing facility within 30 days. The bill would require an individual residing in an institutional setting at a level of care included in the waiver to be determined to qualify for a waiver level of care that is no lower than the level of care he or she receives in the institution in which he or she resides, and would prohibit the department from using more stringent eligibility criteria for a waiver level of care than for the corresponding institutional level of care.~~

~~The bill would provide that an individual who enrolls in the waiver upon attaining 21 years of age who is no longer eligible to receive services through the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) shall receive the same level of services under the waiver that he or she received through the EPSDT program.~~

~~The bill would require the department to adjust the cost limitation category of the waiver to use an aggregate cost limit formula, as specified. The bill would require the department to implement its provisions only if the department has obtained the necessary approvals and receives federal financial participation, and only to the extent that it can demonstrate that its actual total expenditures for services provided under the waiver will not exceed a specified threshold.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14132.99 of the Welfare and Institutions
2 Code, as added by Section 3 of Chapter 551 of the Statutes of 2005,
3 is amended to read:

4 14132.99. (a) For the purposes of this section, “facility
5 residents” means individuals who are currently residing in a nursing
6 facility and whose care is paid for by Medi-Cal either with or
7 without a share of cost. The term “facility residents” also includes
8 individuals who are hospitalized and who are or will be waiting
9 for transfer to a nursing facility.

10 ~~(b) An additional 500 slots beyond those currently authorized~~
11 ~~for the home- and community-based Level A/B nursing facility~~
12 ~~waiver shall be added and 250 of these slots shall be reserved for~~
13 ~~residents residing in facilities and transitioning out of facilities.~~

14 (b) By February 1, 2016, the department shall apply for an
15 additional 5,000 slots, to be added in the 2016–17 fiscal year,
16 beyond those currently authorized for the home- and
17 community-based Nursing Facility/Acute Hospital Waiver, to
18 ensure that individuals residing in, or at risk of, out-of-home
19 placements, including nursing facilities, can be considered for,
20 and, if eligible, receive services from, the waiver without delay.

21 (c) For those patients who are in acute care hospitals and who
22 are pending placement in a nursing facility, the department shall
23 expedite the processing of waiver applications in order to divert
24 hospital discharges from nursing facilities into the community.

25 (d) The nursing facility Level A/B waivers shall be amended
26 to add the following services:

27 (1) One-time community transition services as defined and
28 allowed by the federal Centers for Medicare and Medicaid Services,
29 including, but not limited to, security deposits that are required to
30 obtain a lease on an apartment or home, essential furnishings, and
31 moving expenses required to occupy and use a community
32 domicile, set-up fees, or deposits for utility or service access,
33 including, but not limited to, telephone, electricity, and heating,
34 and health and safety assurances, including, but not limited to, pest
35 eradication, allergen control, or one-time cleaning prior to

1 occupancy. These costs shall not exceed five thousand dollars
2 (\$5,000).

3 (2) Habilitation services, as defined in Section 1915(c)(5) of
4 the federal Social Security Act (42 U.S.C. Sec. 1396n(c)(5)), and
5 in attachment 3-d to the July 25, 2003, State Medicaid Directors
6 Letter re Olmstead Update No. 3, to mean services designed to
7 assist individuals in acquiring, retaining, and improving the
8 self-help, socialization, and adaptive skills necessary to reside
9 successfully in home- and community-based settings.

10 (e) When requesting the renewal of the waiver, the department
11 shall consider expanding the number of waiver slots. Prior to
12 submission of the waiver renewal request, the department shall
13 notify the appropriate fiscal and policy committees of the
14 Legislature of the number of waiver slots included in the waiver
15 renewal request along with supportive data for those slots.

16 (f) The department shall implement this section only to the
17 extent it can demonstrate fiscal neutrality within the overall
18 department budget, and federal fiscal neutrality as required under
19 the terms of the federal waiver, and only if the department has
20 obtained the necessary approvals and receives federal financial
21 participation from the federal Centers for Medicare and Medicaid
22 Services. Contingent upon federal approval of the waiver
23 expansion, implementation shall commence within six months of
24 the department receiving authorization for the necessary resources
25 to provide the services to additional waiver participants.

26 ~~SECTION 1. Section 14132.99 of the Welfare and Institutions~~
27 ~~Code, as added by Section 3 of Chapter 551 of the Statutes of~~
28 ~~2005, is amended and renumbered to read:~~

29 ~~14132.991. (a) For the purposes of this section, “facility~~
30 ~~residents” means individuals who are currently residing in a nursing~~
31 ~~facility and whose care is paid for by Medi-Cal either with or~~
32 ~~without a share of cost. The term “facility residents” also includes~~
33 ~~individuals who are hospitalized and who are or will be waiting~~
34 ~~for transfer to a nursing facility.~~

35 ~~(b) By February 1, 2016, the department shall apply for an~~
36 ~~additional 5,000 slots, to be added in the 2016-17 fiscal year,~~
37 ~~beyond those currently authorized for the home- and~~
38 ~~community-based Nursing Facility/Acute Hospital Waiver, to~~
39 ~~ensure that individuals residing in, or at risk of, out-of-home~~

1 ~~placements, including nursing facilities, can be considered for,~~
2 ~~and, if eligible, receive services from the waiver without delay.~~

3 ~~(e) (1) For each fiscal year after the 2016–17 fiscal year, the~~
4 ~~department shall calculate the need for additional slots, and seek~~
5 ~~federal approval to add those slots to the Nursing Facility/Acute~~
6 ~~Hospital Waiver, based on a consideration of the factors listed in~~
7 ~~paragraph (2). In calculating the need for additional slots, the~~
8 ~~department shall also consult with stakeholders, including, but not~~
9 ~~limited to, individuals who use or would like to use waiver services;~~
10 ~~programs with state contracts to divert people from or help people~~
11 ~~leave nursing homes, the designated protection and advocacy~~
12 ~~organization, independent living centers, area agencies on aging,~~
13 ~~county staff providing for the delivery of in-home supportive~~
14 ~~services authorized under Section 12301.6, individuals providing~~
15 ~~services available under Article 7 (commencing with Section~~
16 ~~12300) of Chapter 3, known as the In-Home Supportive Services~~
17 ~~program, and managed care plans providing Medi-Cal long-term~~
18 ~~services and supports.~~

19 ~~(2) The factors considered by the department pursuant to~~
20 ~~paragraph (1) shall include, but not be limited to, all of the~~
21 ~~following:~~

22 ~~(A) Any waiting list for Nursing Facility/Acute Hospital Waiver~~
23 ~~services, including, but not limited to, waiting lists for a particular~~
24 ~~level of care.~~

25 ~~(B) The results of surveys of nursing home residents, including,~~
26 ~~but not limited to, the Minimum Data Sets (MDS), which identify~~
27 ~~residents who want to leave nursing homes.~~

28 ~~(3) Prior to submitting the annual request for additional waiver~~
29 ~~slots and the waiver renewal request, the department shall notify~~
30 ~~the appropriate fiscal and policy committees of the Legislature of~~
31 ~~the number of waiver slots included in the waiver renewal request~~
32 ~~along with data supporting that number of slots.~~

33 ~~(d) (1) For those patients who are in acute care hospitals and~~
34 ~~who are pending placement in a nursing facility, and for those~~
35 ~~individuals who are at imminent risk of placement in a hospital or~~
36 ~~nursing facility, the department shall expedite the processing of~~
37 ~~waiver applications in order to facilitate remaining in a community~~
38 ~~setting and hospital discharges into the community rather than to~~
39 ~~nursing facilities.~~

~~(2) For purposes of this section, both of the following definitions apply:~~

~~(A) “Imminent risk” means more likely than not to occur within 60 days, as determined by a treating professional, including, but not limited to, a physician, a licensed clinical social worker, or a nurse.~~

~~(B) “Expedite the processing of waiver applications” means that the department shall make an eligibility and level of care determination, and inform the individual about available waiver services, within three business days of receipt of the application.~~

~~(e) An individual residing in an institutional setting at a level of care included in the Nursing Facility/Acute Hospital Waiver shall be determined to qualify for a waiver level of care that is no lower than the level of care he or she receives in the institution in which he or she resides. The department shall not use more stringent eligibility criteria for a waiver level of care than for the corresponding institutional level of care.~~

~~(f) (1) An individual who enrolls in the Nursing Facility/Acute Hospital Waiver upon attaining 21 years of age who is no longer eligible to receive services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program shall be eligible for at least the same level of services under the Nursing Facility/Acute Hospital Waiver that he or she received through the EPSDT program unless the individual, and his or her authorized representative, as applicable, agree that the individual’s needs have decreased and a lower level of service is needed.~~

~~(2) The department shall maximize federal financial participation to meet the identified level of need for in-home nursing to ensure that a consumer does not experience a reduction in in-home nursing when he or she reaches 21 years of age.~~

~~(g) The Nursing Facility/Acute Hospital Waiver shall be amended to add the following services:~~

~~(1) One-time community transition services as defined and allowed by the federal Centers for Medicare and Medicaid Services, including, but not limited to, security deposits that are required to obtain a lease on an apartment or home, essential furnishings, and moving expenses required to occupy and use a community domicile, set-up fees, or deposits for utility or service access, including, but not limited to, telephone, electricity, and heating, and health and safety assurances, including, but not limited to, pest~~

1 eradication, allergen control, or one-time cleaning prior to
2 occupancy. These costs shall not exceed five thousand dollars
3 (\$5,000).

4 (2) ~~Habilitation services, as defined in Section 1915(c)(5) of~~
5 ~~the federal Social Security Act (42 U.S.C. Sec. 1396n(e)(5)), and~~
6 ~~in attachment 3-d to the July 25, 2003, State Medicaid Directors~~
7 ~~Letter re Olmstead Update No. 3, to mean services designed to~~
8 ~~assist individuals in acquiring, retaining, and improving the~~
9 ~~self-help, socialization, and adaptive skills necessary to reside~~
10 ~~successfully in home- and community-based settings.~~

11 (h) ~~By July 1, 2016, the department shall adjust the cost~~
12 ~~limitation category of the Nursing Facility/Acute Hospital Waiver~~
13 ~~to use an aggregate cost limit formula.~~

14 (i) ~~By July 1, 2016, the aggregate cost limit formula described~~
15 ~~in subdivision (h) shall be based on 100 percent of the actual~~
16 ~~current rates for the corresponding institutional levels of care~~
17 ~~specified in the Nursing Facility/Acute Hospital Waiver. Any cost~~
18 ~~increase in an institutional level of care shall be matched by an~~
19 ~~increase in the cost limitation of the corresponding Nursing~~
20 ~~Facility/Acute Hospital Waiver level of care.~~

21 (j) (1) ~~The department shall implement this section only to the~~
22 ~~extent it can demonstrate fiscal neutrality within the overall~~
23 ~~department budget, and federal fiscal neutrality as required under~~
24 ~~the terms of the federal waiver, and only if the department has~~
25 ~~obtained the necessary approvals and receives federal financial~~
26 ~~participation from the federal Centers for Medicare and Medicaid~~
27 ~~Services. Contingent upon federal approval of the waiver~~
28 ~~expansion, implementation shall commence within six months of~~
29 ~~the department receiving authorization for the necessary resources~~
30 ~~to provide the services to additional waiver participants.~~

31 (2) ~~The department shall implement the amendments made to~~
32 ~~this section by the act that added this paragraph only to the extent~~
33 ~~it can demonstrate that the department's actual total expenditures~~
34 ~~for home, community-based, and other services under the Nursing~~
35 ~~Facility/Acute Hospital Waiver will not, in any year of the waiver~~
36 ~~period, exceed 100 percent of the amount that would be incurred~~
37 ~~by the Medi-Cal program for these individuals, absent the waiver,~~
38 ~~in institutions for which the individuals qualify, and federal fiscal~~
39 ~~neutrality as required under the terms of the federal waiver, and~~
40 ~~only if the department has obtained the necessary approvals and~~

1 receives federal financial participation from the federal Centers
2 for Medicare and Medicaid Services. Contingent upon federal
3 approval of the waiver expansion, implementation shall commence
4 within six months of the department receiving authorization for
5 the necessary resources to provide the services to additional waiver
6 participants.

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